Teoh Guat Looi v Ng Hong Guan

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO A-02-271 OF 1995
NH CHAN, AHMAD FAIRUZ AND MOKHTAR SIDIN JJCA
28 AUGUST, 1 SEPTEMBER AND 21 SEPTEMBER 1998

***Tort** — Negligence — Res ipsa loquitur — Respondent reversed into another car — Deceased found lying between both vehicles — Sole witness — Appellant unable to prove how accident happened — Accident would not have happened without negligence by respondent — Whether res ipsa loquitur would apply*

PW4 was standing beside the driver's door of his car which was parked on the nearside of the road when another car driven by the respondent reversed into the offside rear portion of his car, although he did not see the actual collision. The deceased (the husband of the appellant) was then found lying on the ground behind the vehicles. The deceased was gravely injured and shortly after, he succumbed to his injuries. In the High Court, the appellant relied entirely on the maxim of res ipsa loquitur to prove her claim against the respondent. At the conclusion of her case, the respondent submitted that there was no case for the respondent to meet. The judge dismissed the appellant's action after putting counsel for the respondent to his election to stand by his submission and not to call evidence. The judge found that negligence was not proved because he did not believe that PW4, who was the only eyewitness called by the plaintiff, actually saw how the accident happened as detailed by him. The plaintiff appealed against this decision.

Held, allowing the appeal:

(1) (Per **NH Chan JCA**) Although the appellant was unable to prove exactly how the accident happened, it was proved to have happened in such a way that prima facie, it could not have happened without negligence on the part of the respondent. The principle of res ipsa loquitur then shifted the onus of proof on the respondent to explain and show how the accident could have happened without negligence on his part, which the respondent made no attempt to do. The respondent had failed to rebut the prima facie case of negligence against him because at the conclusion of the appellant's case, he had elected not to call evidence (see pp 529I and 530D).

(2) (Per **Mokhtar Sidin JCA**, dissenting) Since PW4's evidence was rejected on the ground that he was an untruthful witness, there was no evidence to show that the respondent's car knocked into the deceased. The maxim of res ipsa loquitur could only operate when it had been established by evidence that the deceased was knocked down by the defendant's car. Therefore, the maxim of res ipsa loquitur did not apply here (see p 534B, F–G).

[**Bahasa Malaysia summary**

SP4 sedang berdiri di sebelah pintu kereta sebelah pemandu kenderaannya yang diletakkan pada sebelah kiri jalan raya apabila sebuah lagi kereta yang dipandu oleh penentang berundur masuk ke bahagian belakang keretanya, walaupun ia tidak melihat perlanggaran sebenar. Si mati (suami perayu) kemudiannya dijumpai terlantar atas tanah di belakang kenderaan-kenderaan tersebut. Si mati telah mengalami kecederaan serius dan sejurus selepas itu, ia telah meninggal dunia akibat kecederaannya. Di Mahkamah Tinggi, perayu bergantung secara keseluruhannya pada pepatah res ipsa loquitur bagi membuktikan tuntutannya terhadap penentang. Di penutup kesnya, penentang menghujahkan bahawa tiada kes yang harus dibuktikan oleh penentang. Hakim menolak tindakan perayu selepas membenarkan peguam penentang berdiri atas pilihannya untuk bergantung pada penghujahannya dan untuk tidak memanggil keterangan. Hakim mendapati bahawa kecuaian tidak terbukti kerana beliau tidak percaya bahawa SP4, yang merupakan satu-satunya saksi yang dipanggil oleh plaintif, telah benar-benar menyaksikan bagaimana kemalangan berlaku seperti yang diceritakan olehnya. Plaintif merayu terhadap keputusan ini.

Diputuskan, membenarkan rayuan:

(1) (Oleh **NH Chan HMR**) Walaupun perayu tidak dapat membuktikan dengan tepat bagaimana kemalangan berlaku, ia telah dibuktikan telah berlaku dalam cara yang sedemikian hinggakan prima facie, ia tidak mungkin berlaku tanpa kecuaian pada pihak penentang. Prinsip res ipsa loquitur kemudiannya mengalihkan beban membukti pada penentang untuk menjelas dan menunjukkan bagaimana kemalangan telah berlaku tanpa kecuaian pada pihaknya, yang tidak pun sekali-kali cuba dilakukan oleh penentang. Penentang gagal mematahkan kes kecuaian prima facie terhadapnya kerana di penutup kes perayu, ia telah memilih untuk tidak memanggil keterangan (lihat ms 529I dan 530D).

(2) (Oleh **Mokhtar Sidin HMR**, menentang) Oleh kerana keterangan SP4 ditolak atas alasan bahawa ia adalah saksi yang tidak bercakap benar, tiada keterangan untuk menunjukkan bahawa kereta penentang telah berlanggar dengan si mati. Pepatah res ipsa loquitur hanya boleh beroperasi apabila ia telah dibuktikan melalui keterangan bahawa si mati telah dilanggar oleh kereta defendan. Maka, pepatah res ipsa loquitur tidak terpakai di sini (lihat ms 534B, F–G).]

Notes

For cases on res ipsa loquitur, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 601–620.

Cases referred to

Bennett v Chemical Construction (GB) Ltd [1971] 1 WLR 1571 (refd)
Clarke v Edinburgh and District Tramways Co Ltd [1919] The Scottish Law Reporter (Vol LVI) p 303 (refd)
Halliwell v Venables (1930) 143 LT 215 (refd)
Laurie v Raglan Building Co [1941] 3 All ER 332 (refd)
Lloyde v West Midlands Gas Board [1971] 1 WLR 749 (refd)
McGowan v Stott (1920) 99 LJKB 357n (refd)
Parry v Aluminium Corp Ltd (1940) 162 LT 236 (refd)
Seng Heng Electrical v Chua Len Teng [1970] 1 MLJ 67 (refd)
Simirah v Chua Hock Lee [1963] MLJ 239 (refd)
Tay Kheng Hong v Heap Moh Steamship Co Ltd [1964] MLJ 87 (refd)
Woods v Duncan [1946] AC 401 (refd)
Yuill v Yuill [1945] P 15 (refd)

Appeal from: Civil Suit No 23–7 of 1992 (High Court ,Taiping)

Daljit Singh (*Harbans Singh* with him) (*Gurdev Daljit Su & Co*) for the appellant.
Vijayaram Krishnan (*Azim Ong & Krishnan*) for the respondent.

28 August 1998

NH Chan JCA: In this appeal, the facts are simple and not controverted. At the time in question, one Mr Ng Seng Wah was standing beside the driver's door of his motor car, AW 2255, which was parked on the nearside of the road. The deceased (ie the husband of the plaintiff (appellant)) was also standing next to Mr Ng's stationary car near the offside rear door of the vehicle. At that moment, another motor car, BCC 4647 driven by the defendant (respondent), reversed into the offside rear portion of Mr Ng's car, although Mr Ng did not see the actual collision. He did, however, hear a crashing sound and when he turned around, he saw that the respondent's car had already backed into the rear of his car. He ran to the back of the two cars and found the deceased lying on the ground behind the vehicles. The deceased was gravely injured and shortly after, he succumbed to his injuries.

In this case, at the conclusion of the evidence called for the plaintiff, the defence submitted that there was no case for the defendant to meet. The judge below ruled in his favour after putting counsel for the defendant to his election to stand by his submission and not to call evidence. The plaintiff's action was dismissed. The judge found that negligence was not proved because he did not believe that Mr Ng, who was the only eye witness called by the plaintiff, actually saw how the accident happened as detailed by him.

The plaintiff appeals to this court.

The plaintiff is the widow of the deceased. In her statement of claim, she has pleaded res ipsa loquitur.

The circumstances of an accident, may raise the presumption of negligence under the maxim of res ipsa loquitur. Where a car mounts the pavement, it has been held to afford a prima facie case of negligence against the driver (*McGowan v Stott* (1920) 99 LJKB 357n, followed and reported in *Halliwell v Venables* (1930) 143 LT 215 at p 217).

In *Laurie v Raglan Building Co* [1941] 3 All ER 332, Lord Greene MR (with whom Goddard and du Parcq LJJ agreed) said at pp 335–336:

> What is the position where a person lawfully on the pavement is struck by a vehicle, which, in the ordinary course of things, has no right to be in that position? ... it is said that the evidence which was led at the trial, established that the wheels of the lorry never mounted the pavement at all, and on that proposition, there is based the argument that, whereas, where a vehicle mounts the pavement with its wheels, a prima facie case of negligence is raised, no such prima facie case is raised in a case where all that happens is that some portion of the vehicle hangs over the pavement and hits a person lawfully upon that pavement. ... I cannot see why any distinction is to be drawn, for the purpose of the rule relating to a prima facie case of negligence, between a case where the wheels of a vehicle actually mount the pavement and one where a portion of the vehicle sweeps across the pavement. In each case, the vehicle is in a position where it has no right to be.

Here in the present case, the defendant's car was found in a position where, in the ordinary course of things, it had no right to be. It was found behind Mr Ng's parked car after knocking into it. The deceased, who was then standing beside the rear offside door of Mr Ng's parked car only a moment ago, was found lying on the ground at the back of the two vehicles. Plainly, the accident could not have happened without negligence on the part of the defendant. In my view, a prima facie case of negligence has been established by the plaintiff.

In *Lloyde v West Midlands Gas Board* [1971] 1 WLR 749, Megaw LJ describes res ipsa loquitur as in essence no more than a common sense approach to the effect of the evidence in certain circumstances. It means that a plaintiff prima facie establishes negligence where: (i) it is not possible for him to prove precisely how the accident happened, but (ii) on the evidence as it stands, he manages to show that the accident could not have happened without negligence on the part of the defendant. This is how Megaw LJ put it at p 755:

> I doubt whether it is right to describe res ipsa loquitur as a 'doctrine.' I think that it is no more that an exotic, although convenient, phrase to describe what is in essence no more than a common sense approach, not limited by technical rules, to the assessment of the effect of evidence in certain circumstances. It means that a plaintiff prima facie establishes negligence where: (i) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident; but (ii) on the evidence as it stands, at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety.

A See also *Bennett v Chemical Construction (GB) Ltd* [1971] 1 WLR 1571 at p 1575, where Davies LJ put it more succinctly, thus:

> In my view it is not necessary for that doctrine to be pleaded. If the accident is proved to have happened in such a way that prima facie, it could not have happened without negligence on the part of the defendants, then it is for the
B defendants to explain and show how the accident could have happened without negligence.

Here, in the instant case, Mr Ng did not see how the accident happened. That being the case, the plaintiff was unable to prove exactly how the accident happened. But on the uncontroverted facts, the accident is proved to have happened in a way that prima facie, it could not have happened
C without negligence on the part of the defendant. That raises a prima facie case of negligence against the defendant, so that it now shifts to him the onus to show that he was not negligent or to give an explanation as to how the accident could have happened without negligence being attributed to him. The defendant made no attempt to do that in this case. In my
D judgment, this is a classic case of res ipsa loquitur.

The principle of the res ipsa loquitur only shifts the onus of proof on the defendant, the task of showing he was not negligent or of giving an explanation of the cause of the accident which had happened without negligence on his part (*Woods v Duncan* [1946] AC 401 at pp 419 and 439).
E At p 419, Viscount Simon said:

> The case against Lieutenant Woods has been put as an application of the principle known as res ipsa loquitur, since he was in charge of the forward compartment. Even so, that principle only shifts the onus of proof, which is adequately met by showing that he was not in fact negligent. He is not to be held liable because he cannot prove exactly how the accident happened.
F

And at p 439, Lord Simonds said:

> But to apply this principle, is to do no more than shift the burden of proof. A prima facie case is assumed to be made out, which throws upon him, the task of proving that he was not negligent. This does not mean that he must prove how and why the accident happened; it is sufficient if he satisfies the
G court that he personally was not negligent. It may well be that the court will be more easily satisfied of this fact if a plausible explanation which attributes the accident to some other cause, is put forward on his behalf; but this is only a factor in the consideration of the probabilities. The accident may remain inexplicable, or at least no satisfactory explanation other than his negligence may be offered; yet, if the court is satisfied by his evidence that
H he was not negligent, the plaintiffs' case must fail.

Here, a prima facie case of negligence has been established at the close of the plaintiff's case. Although the plaintiff was unable to prove exactly how the accident happened, but on the uncontroverted evidence as it stands, the accident is proved to have happened in such a way that prima facie, it
I could not have happened without negligence on the part of the defendant. That being the case, the principle of res ipsa loquitur then shifts the onus of proof on the defendant to explain and show how the accident could have happened without negligence on his part.

After the evidence for the plaintiff had been concluded, counsel for the defendant submitted that there was no case for him to meet. The judge followed the proper practice in this sort of situation (as lucidly set out in the judgment of Goddard LJ in *Parry v Aluminium Corp Ltd* (1940) 162 LT 236 and approved in *Simirah v Chua Hock Lee* [1963] MLJ 239 at p 241) by putting counsel for the defence to his election to stand by his submission and not to call evidence. I must add that there is no particular magic about putting counsel to his election not to call evidence. This is how Lord Greene MR put it (*Laurie v Raglan Building Co*) at p 337:

> ... However, I do not wish it to be thought that there is any particular magic about that question being asked, because it seems to me that counsel can make it perfectly clear, by the words which he uses and by the way in which he acts, that he does not intend to call any evidence, and, that being so, he must be taken to have given a negative answer to the question which the judge might otherwise have put to him.

On the evidence as it stands, it follows from what I have said that the plaintiff has established a prima facie case of negligence against the defendant which remains unrebutted because, at the trial, at the conclusion of the plaintiff's case, the defendant had elected not to call evidence. That being so, it is clear to my mind that the plaintiff's action which was dismissed by the judge below is to be restored and dealt with, on the evidence as it stands. On the evidence as it stands, the plaintiff has established liability, with the result that the appeal is allowed on the question of liability with costs here and below.

There can be no question here of ordering a new trial as that can only be considered if the defendant had submitted that there was no case where no election was made; see *Simirah v Chua Hock Lee* [1963] MLJ 239 at p 241 and also *Yuill v Yuill* [1945] P 15 at p 18 where Lord Greene MR said:

> ... if for any reason ... the judge does not put counsel to his election, and no election in fact takes place, counsel is entitled to call his evidence just as if he had never made the submission.

The only matter which remains is that of damages which the judge below did not assess even though evidence in respect of that had been adduced before him at the trial. The case must be remitted to him in order that the damages could be assessed.

1 September 1998

Ahmad Fairuz JCA: I have had the opportunity of reading the draft judgment of my learned brother NH Chan JCA and for the reasons stated therein, I agree with his conclusion that the appeal should be allowed with costs here and below and that the case be remitted to the trial judge for assessment of damages.

21 September 1998

Mokhtar Sidin JCA: The facts in respect of this appeal have been clearly stated by my learned brother NH Chan JCA in his judgment and there is no necessity to repeat them. The only issue before us is whether the learned judge was right in his decision when he dismissed the appellant's claim.

In her claim, the appellant relied entirely on the maxim of res ipsa loquitur to prove her claim against the respondent. In my view, the application of this maxim depends on the evidence of each case, as clearly stated by Megaw LJ in the case of *Lloyde v West Midlands Gas Board* [1971] 1 WLR 749, where at p 755 he said:

> I doubt whether it is right to describe res ipsa loquitur as a 'doctrine'. I think that it is no more than an exotic, although convenient, phrase to describe what is in essence no more than a common sense approach, not limited by technical rules, to the assessment of the effect of evidence in certain circumstances. It means that a plaintiff prima facie establishes negligence where: (i) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident; but (ii) on the evidence as it stands at the relevant time it is more likely than not that the effective cause of the accident was some act or omission of the defendant or of someone for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety.

As can be seen from that case, in order for this maxim to apply, the plaintiff has to establish a prima facie case of negligence first. This should be on a finding of facts by the learned trial judge.

As can be seen from the notes of evidence and the judgment of the learned trial judge, there was only one witness to the whole incident and that is PW4. It is clear that the plaintiff (PW1) was never at the scene, neither were PW2 and PW3. The police witnesses, PW5 and PW6, were also not at the scene at the time of incident. In my view, the appellant relied entirely on the evidence of PW4 to establish a prima facie case of negligence on the part of the defendant. It is clear to me that the trial judge found as a matter of fact that PW4 did not witness the incident. In this respect, it is necessary for me to refer to his judgment. The relevant passage appeared at p 102 of the record of appeal where the trial judge said:

> ... In the statement of claim, the plaintiff categorically averred that motorcar BCC 4647 driven by the defendant negligently reversed and collided into the deceased. Unfortunately, Ng Seng Wah (PW4) the so called principal eye-witness for the plaintiff faltered in his evidence-in-chief and admitted, firstly, that he did not see motorcar BCC 4647 reversing and, secondly, he did not see motorcar BCC 4647 colliding into the deceased. Under cross-examination, Ng Seng Wah (PW4) admitted that a portion of his police report lodged on 21 August 1992 at about 4.35pm (see the agreed bundle) was wrong particularly the following passage: 'orang itu (referring to the deceased) telah dilanggar oleh motorkar kawan saya (referring to the

defendant).' Ng Seng Wah (PW4) again agreed under cross-examination that he did not see the deceased avoiding motorcar BCC 4647 as it reversed nor did he see the deceased jumping from the position where he last stood. In a nutshell, Ng Seng Wah (PW4) did not witness the accident.

Further down at p 105 the trial judge said:

> I have taken particular care in this case to record the evidence of the plaintiff and her witnesses, almost verbatim. I have gone through the evidence and in my judgment Ng Seng Wah (PW4) has to come to court, taken the affirmation and told me deliberate lies. Finally when his conscience pricked him, he crumbled and told this court that he did not witness the accident. Even the sketch plan (see the agreed bundle at p 9) drawn by Sergeant 41170 Mustapha bin Yusof (PW6) did not assist the plaintiff at all. When the said sergeant arrived at the scene the two motorcars were not there and there were no glass fragments on the road at all. The sketch plan did not show as to how the accident took place; it merely showed the site of the accident. Surely this kind of sketch plan would be of no use to the plaintiff. To add insult to injury, Corporal 90178 Salliah bte Ishak (PW5) lodged a police report when the deceased was first warded at the hospital (see the agreed bundle at p 8) and in her policy report she gave the reason for the accident to be: 'akibat kemalangan jalan raya di Jalan Lahat (kereta terbabas).' This runs counter to the statement of claim and the said corporal explained under examination-in- chief that she obtained the details from the admission book of the hospital. Again the said corporal made a mistake in regard to the location of the accident; it was not at Jalan Lahat but rather at Jalan Persiaran Dato'. It is most unfortunate for the widow to lose her husband at so young an age and be saddled with two children. But the law is clear. The plaintiff must prove her case. On the available evidence, I ruled that the plaintiff had made out no case and I dismissed it with costs.

From the above passages, it is clear to me that the trial judge, based on the evidence before him, found that PW4 did not see how the deceased fell. Nowhere was there any evidence to show that it was the defendant's car that knocked into the deceased. At the most, the only evidence available was that the defendant's car knocked into the rear of the stationary car of PW4. There is, in my view, a prima facie case of negligence on the part of the defendant in knocking into PW4's car but not against the deceased.

It is trite law that finding of facts by the trial judge should not be disturbed. Ong Hock Thye CJ (Malaya) (as he was then) in the case of *Seng Heng Electrical v Chua Len Teng* [1970] 1 MLJ 67 at p 68 said:

> With respect, we do not think that he was justified in substituting his own opinion for that of the magistrate 'where the credibility or realibility of one or more witnesses has been in dispute, and where a decision on these matters has led the trial judge to come to his decision as a whole': see *Benmax v Austin Motor Co Ltd* [1955] AC 370 at p 375, per Lord Reid. Citing *Thomas v Thomas* [1947] AC 484 at pp 487–488, his Lordship recalled this passage from the speech of Lord Thankerton:
>
> > 'Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage

enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion.'

The reason for doing so is explained by the House of Lords in the case of *Clarke v Edinburgh and District Tramways Co Ltd* [1919] The Scottish Law Reporter (Vol LVI) p 303 where at p 304 Lord Shaw said:

> When a judge hears and sees witnesses and makes a conclusion or inference with regard to what is the weight on balance of their evidence, that judgment is entitled to great respect, and that quite irrespective of whether the judge makes any observation with regard to the credibility or not. I can, of course, quite understand a court of appeal that says that it will not interfere in a case in which the judge has announced as part of his judgment that he believes one set of witnesses, having seen them and heard them, and does not believe another. But that is not the ordinary case of a cause in a court of justice. In courts of justice in the ordinary case things are much more evenly divided: witnesses without any conscious bias towards a conclusion may have in their demeanour, in their manner, in their hesitation, in the nuance of their expressions, in even the turns of the eyelid, left an impression upon the man who saw and heard them which can never be reproduced in the printed page. What in such circumstances, thus psychologically put, is the duty of an appellate court? In my opinion the duty of an appellate court in those circumstances is, each judge of it, to put himself, as I now do in this case, the question, Am I — who sits here without these advantages, sometimes broad and sometimes subtle, which are the privilege of the judge who heard and tried the case — in a position, not having those privileges, to come to a clear conclusion that the judge who had them was plainly wrong? If I cannot be satisfied in my own mind that the judge with those privileges was plainly wrong, then, recognizing that I have not the same privileges which he enjoyed, it appears to me to be my duty to defer to his judgment.

The Privy Council reiterated the same principles in the case of *Tay Kheng Hong v Heap Moh Steamship Co Ltd* [1964] MLJ 87 where Lord Guest, delivering the judgment of the court, at p 92 said:

> There is a heavy onus on a party who seeks to displace the conclusion formed by the trial judge on questions of fact. The principles upon which an appellate court should act in reviewing the decision of a judge of first instance were stated by Lord Thankerton in *Watt or Thomas v Thomas* [1947] AC 484 at p 487:
>
> 'I Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion;
>
> II The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence;
>
> III The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper

> advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court.'

Turning to the present appeal, as I have said earlier, the only witness called by the plaintiff to give evidence of the incident was PW4. The learned trial judge had rejected his evidence on the ground that he was an untruthful witness. The learned judge gave his reasons for doing so. I could not find any reason to depart from his conclusion on that witness and on the other hand, there is ample evidence to support his conclusion. Without the evidence of PW4, there is no evidence whatsoever of the incident, what more to show that the defendant knocked into the deceased which, in my opinion, will trigger the prima facie negligence on the part of the defendant.

Even assuming that the evidence of PW4 is to be accepted, I have the opportunity of going through his evidence in the record of appeal. PW4 in his evidence admitted that he did not see the defendant reversing his car nor did he witness the defendant's car colliding with the rear of his car. He also gave evidence that just before he heard the sound of collision, he saw the deceased by the side of the left rear door of his car. He did not see the defendant's car knocking down the deceased. On hearing the sound of the collision, he turned around and saw the deceased lying on the road. The deceased who was still alive was sent to the hospital. The whole effect of the evidence of PW4 is that he did not see the defendant's car knocking into the deceased. As such, there is no evidence to show that the defendant's car knocked into the deceased.

Is it safe for the court, based on the evidence available before it, to make an inference that the deceased was knocked down by the defendant's car? In my opinion, it could not do so and the maxim of res ipsa loquitur cannot operate to help one coming to that conclusion. In my view, the maxim could only operate when it has been established by evidence that the deceased was knocked down by the defendant's car. It is clear to me that in the present appeal, whether PW4's evidence is accepted or not, there is no evidence to show that the defendant's car knocked into the deceased. For the above reasons, I beg to differ from my learned brothers. I hold that the maxim of res ipsa loquitur does not apply in the present appeal.

I would therefore dismiss the appeal with costs.

Appeal allowed.

Reported by David Lai